

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	
Petition for Declaratory Ruling of the	)	
Cellular Telecommunications &	)	
Internet Association	)	
_____	)	

**COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION**

Pursuant to section 1.2 of the Federal Communication Commission's (FCC or Commission) rules,<sup>1</sup> the FCC seeks comment on the Cellular Telecommunications & Internet Association's (CTIA) Petition for Declaratory Ruling (Petition).<sup>2</sup> The United States Telecom Association (USTA),<sup>3</sup> through the undersigned and pursuant to FCC Rules 1.415 and 1.419,<sup>4</sup> hereby provides its comments on the Petition.

In its Petition, CTIA contends that the FCC must clarify and/or resolve a number of outstanding number portability issues before commercial mobile radio services (CMRS) providers are required to provide LNP. CTIA specifically seeks resolution from the FCC as to what: (1) constitutes a reasonable length of time for a carrier to port a number to another provider; and (2) type of an agreement is necessary between CMRS providers and local exchange carriers (LECs) in order to port numbers. CTIA requests that the FCC clarify the duties and obligations of both wireless and wireline carriers to provide LNP by Labor Day, September 1, 2003. CTIA asserts that

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<sup>1</sup> 47 C.F.R. § 1.2.

<sup>2</sup> Telephone Number Portability, CC Docket No. 95-116, Petition for Declaratory Ruling of the Cellular Telecommunications & Internet Association, filed May 13, 2003 (Petition).

<sup>3</sup> USTA is the Nation's oldest trade organization for the local exchange carrier industry. USTA's carrier members provide a full array of voice, data and video services over wireline and wireless networks.

<sup>4</sup> 47 C.F.R. §§ 1.415 and 1.419.

expedited review must occur in order for CMRS providers to meet the FCC's wireless number portability implementation deadline of November 24, 2003.

## **BACKGROUND**

In the *Telephone Number Portability* First Report and Order,<sup>5</sup> the FCC adopted rules and deployment schedules for number portability. The FCC, pursuant to Section 251(b) of the Communications Act of 1934, as amended (47 U.S.C. § 151 *et seq.*) (Communications Act) ordered local exchange carriers (LECs) to begin the phased deployment of long-term database methods for number portability, initially in the 100 largest Metropolitan Statistical Areas (MSAs). In addition, the FCC found that although CMRS providers were not LECs under Section 251(b),<sup>6</sup> it had independent authority under Sections 151, 152 and 332 of the 251(b) (2) of the Communications Act to require CMRS providers to also deploy long-term database methods for number portability in designated MSAs. As a result of extensions granted by the FCC, the current CMRS provider number portability implementation date is November 24, 2003.

CTIA recently appealed the FCC's mandate that CMRS providers must provide number portability to the United States Court of Appeals for the District of Columbia Circuit, *See Cellular Telecommunications & Internet Association and Cello Partnerships, d/b/a Verizon Wireless v. FCC*, No. 02-1264 (D.C. Cir.) (CTIA Appeal). On June 6, 2003, the Court of Appeals issued its opinion in the CTIA Appeal. The Court dismissed CTIA's petition for review in part and denied the petition in part. The FCC wireless number portability rules remain in effect and wireless number portability implementation continues to have an effective date of November 24, 2003.

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<sup>5</sup> *Telephone Number Portability*, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352 (1996).

<sup>6</sup> *See* 47 U.S.C. § 251(b) (stating (b)(2) Number Portability.-The duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission).

Currently pending before the FCC are CTIA's January 23, 2003 Petition for Declaratory Ruling (Rate Center Petition) and this Petition.<sup>7</sup> In the Rate Center Petition, CTIA asks the FCC to rule that wireline carriers are obligated to port their customers' telephone numbers, upon customers' requests, to CMRS providers whose service areas overlap the rate centers of wireline carriers. CTIA contends that some LECs have narrowly construed their number portability obligations with regard to CMRS providers, taking the position that portability is required only when CMRS providers have established a point of presence in the wireline rate center where porting is sought, and then only within the rate center. USTA filed comments and reply comments in response to the Rate Center Petition. USTA stated its opposition to mandatory wireless number portability on the basis that it is unnecessary as a vehicle to promote competition and its costs to the wireless industry are not justified by whatever marginal customer benefits may be derived from it. USTA, however, staunchly opposed CTIA's Rate Center Petition to the extent that it sought wireline number portability outside of wireline carriers' rate centers and pursuant to "service level porting agreements." USTA agrees with the basic thrust of this Petition that a number of significant, pending number portability issues must be resolved by the FCC before wireless number portability is implemented. A failure on the part of the FCC to do so will result in substantial customer confusion, carrier disputes that will draw on FCC and/or state public service commission resources, and the wasting of significant wireless and wireline carrier resources as unresolved issues are resolved over time through less efficient means.

## **DISCUSSION**

### **I. Number Porting Interval**

In its Petition, CTIA requests that the FCC address the time interval required for number porting between carriers. "The porting interval is the amount of time it takes for two service

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<sup>7</sup> See *Comment Sought on CTIA Petition for Declaratory Ruling that Wireline Carriers Must Provide Portability to Wireless Carriers Operating Their Service Areas*, CC Docket No. 95-116,

providers to complete the process of porting a telephone number when a customer changes providers but keeps the same telephone number.”<sup>8</sup> CTIA contends that CMRS providers process number porting within one business day for wireless to wireless ports. CTIA also claims that the length of time for wireline carrier number porting can be in some cases a week (as long as four business days). CTIA states that it is essential for the FCC to address the porting interval issue between wireline and wireless providers, which has been pending before the Commission since May 1998, before wireless LNP occurs.

USTA agrees with CTIA that any existing differences in porting intervals must be resolved before wireless number portability is required. Any disparity between wireless providers’ and wireline providers’ porting intervals is technologically based and can be directly attributed to the differences in the operation of wireline and wireless telecommunications networks, as well as the different regulatory regimes under which they operate. The FCC must take into account the network operations differences and different regulatory structures that separate wireless and wireline carriers rendering a decision on the porting interval requirement.

USTA believes that resolution of the porting interval issue<sup>9</sup> must be resolved in a manner that ensures consistency between wireless to wireline and wireline to wireless. When porting numbers, wireline carriers can take up to four business days. USTA believes that the FCC should decide the porting interval dispute in a manner that retains the current LEC porting interval requirement of porting within four business days.

## **II. Number Porting Requires An Interconnection Agreement**

CTIA asserts that for number porting to occur that “as a practical matter, some sort of agreement must be reached to govern the terms under which carriers will test with and port numbers

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Public Notice, 18 FCC Rcd 832 (2003); *see also* *Petition for Declaratory Ruling of the Cellular Telecommunications & Internet Association* (filed Jan. 23, 2003) (Rate Center Petition).

<sup>8</sup> CTIA Petition at 7.

to one another.”<sup>10</sup> CTIA contends that an interconnection agreement between carriers is not needed in order to effectuate the porting of a number; rather, it believes that a “Service Level Porting Agreement” (SLA) is sufficient.

USTA believes that carriers must have an interconnection agreement pursuant to Section 252 of the Act<sup>11</sup> before numbers are ported between them. The FCC should reject CTIA’s contention that a SLA is all that is required for a wireline carrier to port to a CMRS provider. There is no common understanding within the industry as to the definition of a SLA. Pursuant to Section 252(a)(1) of the Act<sup>12</sup> the “agreed upon document that sets out the terms and conditions by which incumbent LECs (ILEC) provide number portability is an interconnection agreement and must be filed with the appropriate state commission.”<sup>13</sup> Contrary to CTIA’s belief, interconnection agreements for LNP, at least where an ILEC is involved, are mandated by section 251 and 252 of the Act, and by FCC precedent. As states at Section 251(c)(1), ILECs have a “duty to negotiate in good faith in accordance with section 252 the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) and this subsection [subsection (c)].” For LECs, number portability is a subsection (b)(5) requirement.

Today, ILECs are required to have an interconnection agreement in order to port numbers to and from another LEC, which porting is limited to the wireline rate center. Likewise, a CMRS provider should be required to enter into an interconnection agreement with an ILEC in order to secure number porting. An interconnection agreement is essential to number portability in order to ensure that proper routing, call completion, and service quality standards are sustained.

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<sup>9</sup> See *North American Numbering Council Local Number Portability Administration Working Group Report on Wireless Wireline Integration*, May 8, 1998, CC Docket No. 95-116, 12 (filed May 18, 1998).

<sup>10</sup> CTIA Petition at 16.

<sup>11</sup> 47 U.S.C. § 252.

<sup>12</sup> 47 U.S.C. § 252(a)(1).

<sup>13</sup> SBC Rate Center Petition comments at 8.

### **III. The FCC Should Resolve the Intercarrier Dispute Between BellSouth and Sprint In The Intercarrier Compensation Proceeding**

In 2002, Sprint Corporation filed a Petition for Declaratory Ruling (Sprint Petition) seeking a determination that a LEC may not refuse to load telephone numbering resources from an interconnecting carrier and may not refuse to honor the routing and rating points designated by the interconnecting carrier for its numbering resources. In its Petition, CTIA correctly asserts that the issues raised in the proceeding have not been resolved and that the dispute largely concerns matters of intercarrier compensation, not number portability. CTIA, however, contends that the underlying dispute is that CMRS providers do not maintain a switch in every wireline rate center. “Once number portability is implemented, if carriers elect to continue to route calls to their original rate center, rating and routing points must necessarily be disassociated.”<sup>14</sup> CTIA believes that the LEC position is quite clear that disassociating numbers from their rate centers would conflict with “current rules [that] tie wireline number portability to the rate center.”<sup>15</sup> Consequently, CTIA contends that the “Sprint-BellSouth dispute directly affects the availability of LNP to consumers and should be resolved in a manner that promotes number portability.”<sup>16</sup>

In the proceeding, USTA requested that the Sprint Petition be dismissed, as BellSouth had removed the controversy that supported Sprint’s request. However, USTA urged the FCC to address the larger issue of wireless rating and routing of traffic in the Commission’s *Developing A Unified Intercarrier Compensation Regime* proceeding. In its comments, USTA proposed the following position concerning wireless routing and rating:

1. Where a wireless carrier requests that an RBOC load NPA-NXX codes where the routing and rating points for the codes are not the same, the wireless carrier must properly compensate all involved carriers for the costs incurred for transit, including transport and termination.
2. Any CMRS provider obtaining an NPA/NXX with the rate center designation (rating point) of an independent local exchange carrier must designate a point

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<sup>14</sup> CTIA Petition at 25.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 26.

of presence within the independent local exchange carrier's serving area and make arrangements with the independent local exchange carrier, which may include establishing a direct connection with the independent local exchange carrier.

3. Consistent with the prior policy, when the independent local exchange carrier does not have a tandem, the homing arrangement for the NPA/NXX may be on the LATA tandem. This will allow calls from other areas to the NPA/NXX be transited by the LATA tandem company and completed by the CMRS provider. If there is no direct connection to the independent local exchange carrier, the CMRS provider and the independent local exchange carrier must have agreed to compensation and facilities arrangements among themselves as well as with the transiting company.

LECs must be compensated for the use of their facilities and require a point of presence within their service area to connect their facilities to those of a CMRS provider in order to rate and route calls. LNP implementation and the evolution of intercarrier compensation structures are intertwined. The impacts of inter-modal LNP on inter-carrier compensation structures should be addressed before the FCC requires wireless number portability.

#### **A. LNP and the Wireline Rate Center**

In the *Telephone Number Portability*, Second Report and Order,<sup>17</sup> the FCC determined that wireline LNP would be bound by the existing rate center of the ILEC. This determination was made based on the finding of the North American Numbering Council (NANC) that "location portability is technically limited to rate center/rate district boundaries of the incumbent LEC due to rating and routing concerns."<sup>18</sup> The NANC determination was adopted by the FCC and is codified at 52.26 of the Commission's rules.<sup>19</sup> "By contrast, the Commission has established the MTA as the local calling area for CMRS, permitting CMRS carriers to use a single switch to serve radio facilities over a very wide geographic area."<sup>20</sup> The differences between wireline and wireless

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<sup>17</sup> Telephone Number Portability, CC Docket No. 95-116, Second Report & Order, 12 FCC Rcd 12281 (1997) (LNP Second Report & Order).

<sup>18</sup> North American Numbering Council Local Number Portability Administration Selection Working Group Final Report and Recommendation to the FCC, Appendix D at 5 (§ 7.3) (rel. April 25, 1997).

<sup>19</sup> 47 CFR § 52.26.

carriers' calling areas has resulted in "disparity" because the geographic scope of Service Provider number portability was limited by the FCC to the wireline rate center.<sup>21</sup>

If the FCC were to require number portability outside of the wireline rate center, it would require ILECs to reconfigure their routing, rating and billing infrastructures at a substantial cost to both the carrier and customer. In the Wireline Rate Center proceeding, USTA has expressed to the Commission the routing and rating difficulties that ILECs will encounter if the FCC were to allow porting outside of the wireline rate center into larger geographic areas (*e.g.* MSAs), which in some instances would be multi-jurisdictional. Should the FCC allow for the expansion of number portability outside of the wireline rate center, ILECs, who are subject to intrastate rate regulation, could lose significant intrastate toll revenue. Intrastate rate structures that are within the jurisdiction of state public service commissions could be significantly affected.

Finally, many of the disruptive effects of inter-modal number portability can be alleviated by the FCC by requiring CMRS providers to port numbers within the wireline rate center, in the same manner as CLECs. CLECs must have a physical presence within the wireline rate center in order to port numbers with the ILEC. CLEC presence within the wireline rate center consists of a switch or other point of presence. USTA recently offered the following definition of "point of presence" within the wireline rate center for LNP:<sup>22</sup>

A location that contains physical circuit(s) (i.e.; DS0, DS1, DS3, OCn) that provides interconnection trunking between the ILEC and the interconnecting service provider. These circuits must have one end point that resides either in the serving rate center or at the ILEC switch that serves that rate center. The other end point must terminate at the interconnecting service provider's network switching.

LNP between CLECs and ILECs is limited to the wireline rate center and numbers cannot be ported from one wireline rate center to another. ILEC and CLEC LNP permits ILECs to maintain

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<sup>20</sup> See CTIA Petition at 5 (citing *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket NOs. 96-98; 95-185, First report and Order, 11 FCC Rcd 15499, ¶ 1036 (1996)).

<sup>21</sup> See *North American Numbering Council LNPA Working Group 3<sup>rd</sup> Report on Wireless Wireline Integration*, at 16 (Sept. 30, 2000).



their routing, rating and billing infrastructures. The same would hold true of CMRS and ILEC number portability within the wireline rate center. Thus, USTA requests that the FCC immediately affirm its retention of its current rule limiting the porting of numbers to within the wireline rate center.

#### **IV. The FCC Must Decide The Bona Fide Request Issue**

In the *LNP Further Notice*,<sup>23</sup> the FCC “sought comment on whether carriers should be required to deploy LNP and participate in thousands-block number pooling in the 100 largest MSAs, regardless of whether they have received a specific bona fide request to provide LNP from another carrier.”<sup>24</sup> Whether LNP capability will continue to be tied in the 100 largest MSAs to the receipt of a bona fide request is an extremely important issue for LECs. It is an issue that the FCC should address, by retaining its current rule, before the added complexity of wireless number portability is required. The FCC must continue to limit the LEC requirement to be LNP capable within the 100 largest MSAs to the wireline rate center for which another carrier has made a bona fide number portability request.<sup>25</sup>

#### **V. The FCC Should Consider Issues Involving Slamming, Directory Listings and Telemarketing Calls**

In the context of inter-modal number portability, USTA contends that the FCC must address issues involving slamming, directory listings and telemarketing calls in order to avoid needless customer confusion and dissatisfaction. USTA believes that the FCC must reconcile the differences in how these issues are addressed in the wireline and wireless contexts before it proceeds forward with wireless number portability. Wireline customers have expectations concerning choice of long distance carrier and having directory listing that do not exist for wireless customers. Likewise,

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<sup>22</sup> See USTA Ex Parte Letter of May 30, 2003 in CC Docket 95-116.

<sup>23</sup> *Numbering Resource Optimization*, CC Docket Nos. 99-200 and 95-116, Third Report and Order on Reconsideration in CC Docket 99-200, Third Further Notice of Proposed Rulemaking in CC Docket 99-200, and Second Further Notice of Proposed Rulemaking in CC Docket No. 95-116, 17 FCC Rcd 4784 (2002).

<sup>24</sup> CTIA Petition at 31.

wireless customers have expectations concerning telemarketing calls that do not exist for wireline customers. How these expectations will be addressed and reconciled must be determined before wireless number portability is required or customers porting numbers back and forth between wireline and wireless networks will be left confused, frustrated and annoyed.

### CONCLUSION

USTA continues to believe that wireless number portability is unnecessary and unjustified. If the FCC feels compelled to proceed forward with wireless number portability, then it must address the numerous outstanding number portability implementation issues identified in the Petition and addressed herein. Failure on the part of the FCC to resolve these pending issues before proceeding forward with wireless number portability will result in carrier disputes, the incurrence of unnecessary carrier expenses, and customer confusion and frustration. Such results are not in the public interest.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION



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June 13, 2003

**CERTIFICATE OF SERVICE**

I, Meena Joshi, do certify that on June 13, 2003, the aforementioned Comments Of The United States Telecom Association was either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the attached service list.

/s/ Meena Joshi  
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